

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL MAJOR, MARK
MAJOR,

Plaintiffs,

v.

BOHRNSEN & STOWE, MAXEY
LAW OFFICE, MARK D.
HODGSON,

Defendants.

NO. CV-08-269-RHW

**ORDER DENYING PLAINTIFFS'
F.O.I.A. REQUESTS; DENYING
MOTION FOR
RECONSIDERATION**

Before the Court are Plaintiffs' Motion for Reconsideration (Ct. Rec. 78) and Plaintiffs' F.O.I.A. Requests from Chief Judge Robert H. Whaley (Ct. Rec. 81).

1. Motion for Reconsideration

"[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (quoting *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)). It is considered an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Id.* A motion under Rule 59(e) "may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Id.* (emphasis in original).

**ORDER DENYING PLAINTIFFS' F.O.I.A. REQUESTS; DENYING
MOTION FOR RECONSIDERATION ~ 1**

1 Throughout Plaintiffs' pleadings, Plaintiffs insist that a document was
2 removed from the Court file and rely on this impression as support for their Motion
3 for Reconsideration. Plaintiffs are mistaken. No documents were removed from
4 the Court file. Rather, the document Plaintiffs insist was removed is actually
5 located in the public file under Court Record 8.

6 Plaintiffs filed their Complaint on August 28, 2008 (Ct. Rec. 1). On
7 September 19, 2008, they filed two motions for default: (1) Plaintiffs' Motion for
8 Default Judgment Against Bohrsen & Stowe and Motion for Jury Trial to Justify
9 Awards for Damages Requested (Ct. Rec. 8); and (2) Plaintiffs' Motion for Default
10 Judgment Against Mark D. Hodgson and Motion for Jury Trial to Justify Awards
11 for Damages Requested (Ct. Rec. 8-3). They also filed a Proposed Order regarding
12 the default judgment against Defendant Bohrsen & Stowe (Ct. Rec. 8-2). Plaintiff
13 failed to file a notice for hearing, as required under LR 7.1(h)(1) ("Any party filing
14 a motion shall also file a notice setting the time, date, and place for a hearing on a
15 motion.").

16 Defendant Bohrsen & Stowe filed its answer to the Complaint on
17 September 18, 2008 (Ct. Rec. 7); Defendant Mark Hodgson filed his answer to the
18 Complaint on September 22, 2008 (Ct. Rec. 22). On September 29, 2008,
19 Plaintiffs filed a Notice of Withdraw of Plaintiffs' Default Motion Against
20 Bohrsen & Stowe (Ct. Rec. 14). As a result of this Notice, the Motion for Default
21 Judgment (Ct. Rec. 8) was terminated.

22 On November 5, 2008, Plaintiffs filed a Supplemental Motion for Default
23 Judgment Against Mark D. Hodgson and Motion for Jury Trial to Justify Awards
24 for Damages Requested (Ct. Rec. 16). Again, Plaintiff failed to note the motion for
25 hearing as required by the Local Rules and was notified as such by the District
26 Court Clerk's office. On November 13, 2008, Plaintiffs filed a Notice of Hearing
27 on the motion and set the motion for December 9, 2008. On December 12, 2008,
28 the Court denied Plaintiffs' Supplemental Motion for Default Judgment Against

1 Mark D. Hodgson (Ct. Rec. 19).

2 The Court did not rule on the first Motion for Default for two reasons. First,
3 it was not presented to the Court as a pending motion to be decided because it had
4 not been filed by the Clerk's Office as a separate motion; instead it was filed as an
5 attachment to a Motion for Default against a different Defendant. The Clerk
6 mistakenly assumed that it was a duplicate of the first motion and docketed it
7 accordingly. This is reflected in the Docket Text that accompanies Court Record 8.
8

9 Secondly, Plaintiff failed to file a Notice of Hearing as required by the local
10 rules. The Notice of Hearing is necessary to inform the Court that there is a
11 pending motion to be decided.

12 Regardless of the failure to note the motion, the Court would not have
13 granted Plaintiffs' motion for default. Defendant Hodgson answered Plaintiffs'
14 complaint and Plaintiffs were not able to demonstrate any prejudice by the late
15 filing of the answer.

16 Thus, to the extent Plaintiffs are relying on their belief that a document was
17 taken from the public record in support of their motion for reconsideration, this did
18 not happen and is not a basis for granting the motion.

19 Moreover, the Court concludes that Plaintiffs have not presented the Court
20 with newly discovered evidence, have not shown that the Court committed clear
21 error, and have not demonstrated that there is an intervening change in the
22 controlling law. As such, Plaintiffs' Motion for Reconsideration is denied.

23 **2. Plaintiffs' F.O.I.A. Requests**

24 Plaintiffs have filed a Freedom of Information Act request. The courts of
25 the United States are excluded from the Freedom of Information Act, 5 U.S.C.
26 551(1)(B). As such, Plaintiffs' F.O.I.A. Requests from Chief Judge Robert H.
27 Whaley is denied.

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Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiffs' Motion for Reconsideration (Ct. Rec. 78) is **DENIED**.

2. Plaintiffs' F.O.I.A. Requests from Chief Judge Robert H. Whaley (Ct. Rec. 81) is **DENIED**.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order, forward copies to Plaintiffs and counsel, and close the file.

DATED this 19th day of May, 2009.

S/ Robert H. Whaley

ROBERT H. WHALEY
Chief United States District Judge

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